

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re:

*Michael Paul Lang and  
Melody Lynn Lang,*  
  
Debtors.

BKY 04-34766

Chapter 13 Case

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**NOTICE OF HEARING AND MOTION OBJECTING TO CONFIRMATION OF  
CHAPTER 13 PLAN**

TO: All parties in interest pursuant to Local Rule 9013-3:

1. Michael J. Farrell, Chapter 13 Trustee (the "Trustee"), by and through his undersigned attorney, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 10:00 a.m. on October 14, 2004 in Courtroom 228A, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, 55101.

3. Any response to this motion must be filed and delivered not later than 10:00 a.m. on October 13, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than October 8, 2004, which is three business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 13 case was filed August 15, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 1322 and 1325 and Bankruptcy Rule 3015. This motion is filed under Bankruptcy Rule 9014 and Local Rules 3015-3, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may apply. Movant requests relief with respect to denial of confirmation of the debtors' Chapter 13 Plan filed August 15, 2004 (the "Plan").

6. The Plan provides that the debtors will pay the Trustee \$125.00 per month for 36 months, for a total of \$4,500.00 (the "Plan Funds"), with \$2,800.00 to unsecured creditors, for a dividend to unsecured creditors of ten percent (10%).

7. The debtor husband is employed in Human Services at MRCI his Schedule I shows his gross monthly income at \$1,681.66. The debtor husband has \$212.51 deducted in payroll taxes, social security and insurance. The debtor wife is employed in Home Health at Sleepy Eye Area Home Health her Schedule I shows her gross monthly income at \$1,471.82.

The debtor wife has \$409.35 deducted in payroll taxes, social security and insurance. The debtor husband has a band and receives self-employment income. Based on information provided to the Trustee at the 341 meeting of creditors regarding debtor husband's self-employment, there appears to be more income that could be available for creditors. However, the debtor husband's extra income is not included in the plan.

8. The Trustee has asked the debtors to modify their plan to include language that they will commit all disposable income for the benefit of the unsecured creditors so that there is a provision in the plan whereby they can commit to provide for the additional income to be included in the plan. To date, the debtors have failed to modify their plan as requested by the Trustee.

9. The Trustee objects to confirmation of the Plan on the grounds that the debtors' proposed plan does not meet either of the alternative requirements for confirmation under 11 U.S.C. 1325(b)(1), in that it does not propose full payment of their unsecured claims, nor does it devote all of the debtors' projected "disposable income" as that term is defined in 11 U.S.C. §1325(b)(2) for the next 36 months toward their plan payments. A debtor under chapter 13 should contribute all disposable income to the debtor's plan. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). "Disposable Income" includes all of a debtor's income which is "not reasonably necessary to be expended" by the debtor. 11 U.S.C. §1325(b)(2).

10. If necessary, the debtors, and an employee of the Trustee may be called to testify as to the matters alleged in this motion.

WHEREFORE, the Trustee requests an order as follows:

1. Denying confirmation of the debtors' Chapter 13 plan filed August 15, 2004.
2. For such other relief as may be just and equitable.

Ulvin and Sullivan Attorneys PA

Dated: October 1, 2003

By: /e/ Patti J. Sullivan  
Patti J. Sullivan, ID # 170124  
Counsel for Chapter 13 Trustee  
P.O. Box 16406  
St. Paul Minnesota  
(651) 699-4825

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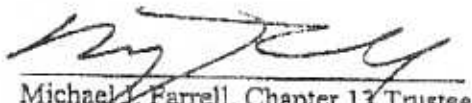
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VERIFICATION

I, Michael J. Farrell, Chapter 13 Trustee, the Movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed: 10-1-04

  
Michael J. Farrell, Chapter 13 Trustee

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**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION**

**FACTS**

The facts supporting the Trustee's objection are summarized in the accompanying motion and will not be repeated here. The Trustee also relies upon the verified Schedules on file and of record herein.

**LEGAL DISCUSSION**

The Bankruptcy Code provides that the Court may not confirm a plan over the objection of the trustee unless the plan provides that all of a debtor's projected disposable income will be applied to make payments under the plan. 11 U.S.C. §1325(b)(1)(B). "Disposable income" is defined in 11 U.S.C. §1325(b)(2)(A) as "income which is received by the debtor and which is not reasonably necessary to be expended... for the maintenance or support of the debtor or a dependent of the debtor. Essentially, this statute requires the debtor to propose a plan that is fully funded, in the sense that the debtor commits to making sufficient payments to pay all the amounts required to be paid to creditors under the proposed plan. A debtor under chapter 13 should contribute all disposable income to the debtor's plan. *In re McDaniel*, 126 B.R. 782, 784 (Bankr. D. Minn. 1991). Upon objection under 11 U.S.C. §1325(b), the debtor must prove that the plan commits all of debtor's disposable income over the three-year period. *In re Sitarz* 150 B.R. 710, 718 (Bankr. D. Minn. 1993).

Here, the debtors testified that the debtor husband receives additional income from self-employment. This is additional disposable income, yet the plan has not been amended to include language committing all disposable income into the plan for the benefit of the unsecured creditors. It is unreasonable for the debtors not to amend their plan to include the excess income. Accordingly, the debtors' plan should be denied, as all of their disposable income has not been committed to the plan.

## CONCLUSION

For the reasons stated herein, the Trustee respectfully requests that confirmation of the debtors' proposed Chapter 13 plan be denied.

Respectfully submitted:  
Ulvin and Sullivan Attorneys, P.A.

Dated: October 1, 2003

/e/ Patti J. Sullivan  
Patti J. Sullivan, ID # 170124  
Counsel for Chapter 13 Trustee  
P.O. Box 16406  
St. Paul Minnesota 55116  
(651)-699-4825

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

I, Joeline Kissinger, legal assistant for attorneys for Michael J. Farrell, Chapter 13 Trustee, declare that on October 1, 2004, I served the attached Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan, Memorandum of Facts and Law, and proposed Order on the individuals listed below, in the manner described:

**By first class U.S. mail, postage prepaid:**

United States Trustee  
1015 United States Courthouse  
300 South Forth Street  
Minneapolis, MN 55415

**By first class U.S. mail, postage prepaid:**

Michael Paul Lang  
604 2<sup>nd</sup> Avenue NW  
Sleepy Eye, MN 56085


Melody Lynn Lang  
604 2<sup>nd</sup> Avenue NW  
Sleepy Eye, MN 56085

Gregory J. Wald, Esq.  
3601 Minnesota Drive, Suite 800  
Edina, MN 55435

Washington Mutual  
7800 North 113<sup>th</sup> Street  
Mailstop MWIB201  
Milwaukee, WI 53224

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: October 1, 2004

  
Joeline Kissinger

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**ORDER DENYING CONFIRMATION OF CHAPTER 13 PLAN**

At St. Paul, MN, October 14, 2004.

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to confirmation of the debtors' proposed Chapter 13 plan. Appearances were noted in the minutes.

Upon the foregoing objection, arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

1. Confirmation of the debtors' proposed Chapter 13 plan filed August 15, 2004 is DENIED.

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Dennis D. O'Brien  
United States Bankruptcy Judge